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The mortgage crisis crusader

By Cate Long

I dialed into a press conference today held by [U.S. Congressman Brad Miller](#), a Democrat from North Carolina. He wanted to share his views on the [suits filed by the Federal Housing Financing Agency \(FHFA\) against 17 banks](#) over recovery on fraudulently misrepresented subprime mortgages. FHFA is seeking to cover losses on approximately \$200 billion of mortgages purchased by Fannie and Freddie prior to their takeover by the government in the summer of 2008. Taxpayers have already covered \$140 billion of FHFA losses from these bad mortgages and the amount is expected to go much higher.

The topic is pretty far afield from my regular Muniland content but I had met Congressman Miller several times on Capitol Hill when I lead [Riski, the open source financial reform project](#), and I'd always been very impressed with his forward-looking efforts on the housing crisis. Once you are around Congress for a while it's easy to see what special interests various members of Congress are promoting. Congressman Miller seemed genuinely independent and interested in America as a well-governed and fair nation. Sad to say these are not common traits on the Hill.

Congressman Miller is not new to the mortgage issue. In [March 2007 he penned a letter to Forbes magazine](#) about the scourge of predatory lending and its devastating effect on families:

The recent spike in defaults in subprime mortgages has caused a hiccup in the markets, but it is

catastrophic for families now facing the loss of their home to foreclosure. Most mortgages help families build wealth, and the equity they build in their home becomes the bulk of their life's savings. Predatory mortgages steal wealth from homeowners. Predatory mortgages are most often refinances.

Predatory lending and fraudulent home loans are the bulk of the assets that make up the securities that FHFA are disputing and that have frozen the financial system. This glut of bad loans has weakened the economy as families lost their homes and equity; neighborhoods have empty properties; and banks are stuck with billions of dollars of unsold properties on their books.

Because the bulk of these bad mortgages are concentrated in a handful of large banks there is a general sense that bank overseers have been practicing "regulatory forbearance" and that banks may not have adequately reserved for potential losses. In his press call Congressman Miller said that regulators have been very aware of legal liabilities and had specifically banned Bank of America from reinstituting their dividend after the [second round of stress tests earlier this year](#).

I asked the Congressman if he had any thoughts on the rumor published by Politico this morning about the banks declaring war on the FHFA and their Democratic supporters:

- **BANKS CONSIDER TOTAL WAR** – M.M. hears that instead of contemplating settlements of the FHFA mortgage-backed securities lawsuits, big banks and their attorneys are more likely to pursue what insiders describe as an all out war strategy in which they go after Fannie Mae and Freddie Mac (and by default their Democratic supporters) in a scorched earth strategy to show the GSE's took an active role in creating the very securities they are now suing the banks over.

Congressman Miller, who has a law degree from Columbia University and a MBA from the London School of Economics, scoffed at the idea that banks could raise a defense of the-other-guys-were-doing-it-so-we-can't-be-held-liable. Although he is not party to the litigation he said he reviewed many of the filings and case documents.

[Peter J. Henning, writing in Dealbook](#) , has an excellent legal analysis of the lawsuits filed by the FHFA in which he details their statutory basis. Read that piece if you are interested in the legal angle of the story. But it's the crusading element of Congressman Miller that fascinates me. Members of Congress live and die by political contributions and it's very rare to find a congressman willing to cross the banks, which are substantial donors. When I asked Congressman Miller about the Republicans on the House Financial Services Committee and their reaction to the FHFA lawsuits he said that he had just gotten back to DC and hadn't been in touch with them but generally they were not supportive of the FHFA trying to make recoveries from the banks. He added that he and the Republicans also had no appetite for continued taxpayer bailouts of Fannie and Freddie.

It's hard to overstate how powerful the banks are in the Congress and various agencies of government. I laud the [acting director of FHFA, Edward DeMarco](#) , and Congressman Miller for standing up and requiring adherence to the rule of law in the mortgage crisis. Their action is sending shockwaves through the financial sector; the American people are searching for some justice in this crisis which wrecked the economy and lives of million of families.